

FACILITATING THE ENFORCEMENT OF CERTAIN SHIPPING LAWS BY THE FEDERAL MARITIME COMMISSION

SEPTEMBER 14, 1971.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. GARMATZ, from the Committee on Merchant Marine and Fisheries, submitted the following

REPORT

[To accompany H.R. 755]

The Committee on Merchant Marine and Fisheries, to whom was referred the bill (H.R. 755) to amend the Shipping Act, 1916, and the Intercoastal Shipping Act, 1933, to convert criminal penalties to civil penalties in certain instances, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

On page 3, line 1, insert the word "a" after the word "by".

On page 3, line 2, strike out the quotation marks.

On page 3, after line 2, insert the following: "(c) Whoever violates any order, rule or regulation of the Federal Maritime Commission made or issued in the exercise of its powers, duties, or functions, shall be subject to a civil penalty to be assessed by the Federal Maritime Commission of not more than \$1,000 for each day such violation continues."

On page 3, line 12, delete the word "imposed" and insert the word "assessed" in lieu thereof.

PURPOSE OF THE BILL

The purpose of the bill, H.R. 755, is to assist the Federal Maritime Commission in carrying out its regulatory functions under the Shipping Act, 1916, and the Intercoastal Shipping Act, 1933. The bill would do this by (a) changing the penalty provisions of the Shipping Act, 1916, from criminal to civil in those three areas that give the Commission most of its enforcement problems in day-to-day operations, (b) providing a civil penalty for violations of any order, rule or regulation of the Commission, and (c) authorizing the Commis-

sion to assess all civil penalties provided for violations of those sections of the Shipping Act, 1916, and the Intercoastal Shipping Act, 1933, which are subject to its jurisdiction.

BACKGROUND OF THE LEGISLATION

The basic regulatory authority of the Federal Maritime Commission is derived from the Shipping Act, 1916; Merchant Marine Act, 1920; Intercoastal Shipping Act, 1933; Merchant Marine Act, 1936; Public Law 89-777 of November 6, 1966; and Public Law 91-224, approved April 3, 1970.

The statutory authority and functions of the Commission embrace the following principal areas: (a) Regulation of rates, services, practices, and agreements of common carriers by water and certain other persons engaged in the foreign commerce of the United States; (2) acceptance, rejection, or disapproval of tariff filings of common carriers engaged in the foreign commerce of the United States; (3) regulation of rates, fares, charges, classifications, regulations, and practices of common carriers by water in the domestic offshore trades of the United States; (4) licensing independent ocean freight forwarders; (5) investigation of discriminatory rates, charges, classifications, and practices of common carriers by water in the foreign and domestic offshore commerce, terminal operators and freight forwarders; (6) issuance of certificates evidencing financial responsibility of vessel owners or charterers to pay judgments for personal injury or death, or to repay fares in the event of nonperformance of voyages or cruises; (7) issuance of certificates evidencing financial responsibility of vessel owners, charterers and operators to meet the potential liability to the United States for the cleanup costs of spilled oil; and (8) rendering decisions, issuing orders, and making rules and regulations governing and affecting common carriers by water, terminal operators, freight forwarders, and other persons engaged in activities subject to the Commission's jurisdiction.

The Commission has encountered difficulty in carrying out its regulatory duties because of certain criminal penalties provided by the Shipping Act, 1916, and its inability to assess penalties provided by the Shipping Act, 1916, and the Intercoastal Shipping Act, 1933.

At the present time the Commission does not have authority to impose the criminal sanctions provided by law. Where the violation of a provision occurs which is subject to a criminal penalty, the only course available to the Commission is to thoroughly document the violation and refer it to the Department of Justice for prosecution. This procedure has certain disadvantages. Because of the efforts required to adequately document such cases, considerable time elapses between the commission of the offense and referral to the Department of Justice. Additional time and effort is incurred by the Department of Justice in establishing a *de novo* case for the offense in the United States District Courts. This procedure also necessarily involves a certain amount of overlapping effort on the part of the Commission and the Department of Justice. When the actual complaint is filed in the court there may lapse a considerable period of time before the case is assigned for trial because of the tremendous backlog of cases confronting most of the Federal Courts. Thus, the penalty for violations of the Shipping Act,

1916, may not be assessed for many months, and in some instances years, after the infraction has occurred. By the time the penalty is imposed any impact it has on business practices in the industry is diluted or lost completely. Further, where there has elapsed a considerable period of time from the infraction to the trial, the courts frequently are inclined to impose a much lighter sentence than if the case had been prosecuted promptly. No regulatory purpose is accomplished in these instances since the amount of the penalty is usually insufficient to deter the offender from future transgressions.

Effective regulation by the Commission is further impeded because penalties now vary widely depending upon the Court having jurisdiction. At present, penalties are fixed and assessed by various judges in various United States District Courts. These judges generally have no special awareness of the intricacies of the shipping industry and penalties that would be sufficient to constitute effective deterrents. They also lack awareness of the amount of penalties imposed by other judges upon other violators who have similar prior records and committed similar offenses. Thus, the Courts have been handicapped in appraising the violation. This has resulted in a lack of uniformity and consistency in fixing and assessing penalties.

COMMITTEE AMENDMENTS

Your Committee amended H.R. 755, as introduced, in three places on page 3 of the bill.

On line 1, the word "a" was inserted after the word "by". This is a technical amendment.

After line 2, a new Subsection 32(c) was inserted to read as follows:

"(c) Whoever violates any order, rule or regulation of the Federal Maritime Commission made or issued in the exercise of its powers, duties, or functions, shall be subject to a civil penalty to be assessed by the Federal Maritime Commission of not more than \$1,000 for each day such violation continues."

The purpose of this amendment is to specifically authorize the Commission to impose a civil penalty of up to \$1,000 for a violation of its orders, rules, or regulations, and to assess such penalty.

On line 12, the word "assessed" was substituted for the word "imposed". The purpose of this amendment is to make this provision consistent with proposed new SEC. 45 of the Shipping Act, 1916.

GENERAL STATEMENT

With reference to the Commission's problems occasioned by the criminal penalties provided by the Shipping Act, 1916, H.R. 755 would change these penalties from criminal to civil in those three areas that give the Commission most of its enforcement problems in day-to-day operations:

(1) That portion of Section 16 which prohibits a shipper or other person, or an officer, agent or employee of such shipper or other person from obtaining or attempting to obtain transportation at rates which would otherwise be applicable, by false billing, false classification, false weighing, false report of weight, or by any other unjust or unfair device or means.

(2) Section 16, Second, which prohibits a common carrier or other person subject to the Act from allowing a person to obtain transportation at less than effective rates by means of false billing, false classification, false weighing, false report of weight, or by any other unjust or unfair device or means.

(3) Section 32 which covers violations of any provisions of the Act for which no specific penalty is provided. This amendment will be most helpful to the Commission in dealing with violations of Section 44 which prohibits anyone from carrying on the business of forwarding unless licensed by the Commission.

The bill would change the classification of the above offenses from criminal to civil, and leave the amount of the penalty unchanged.

With reference to the Commission's problems occasioned by the inability to assess civil penalties, H.R. 755 would specifically grant the Commission this authority. Penalties assessed by the Commission would be remitted or mitigated by it under appropriate circumstances pursuant to the Federal Claims Collection Act of 1966 (31 U.S.C. 951-953), and regulations promulgated thereunder.

Your Committee believes that in lieu of the present cumbersome, regulatory procedures for the above offenses, better administration will be derived by changing the penalties from criminal to civil and empowering the Commission to adjudge the violation and assess appropriate penalties based upon the nature of the violation and the Commission's expertise in shipping matters. In this way the Commission could resolve civil violations as a part of its quasi-judicial functions.

The Commission's primary function is regulation. Its day-to-day operations bring it into contact with many apparent violations. Because of this the Commission has developed an expertise which enable it to know what to look for. It is better equipped to properly evaluate the offense and adjudge an appropriate penalty designed to deter the offender from further violations.

Your Committee wishes to note that the Commission's determinations under these sections would be subject to judicial review in a United States Court of Appeals under the Administrative Orders Review Act (28 U.S.C. 2341 *et seq.*). This would eliminate the necessity of a *de novo* District Court penalty suit, presently required, and would enable the Commission to relate the amount of the penalty directly to the nature and circumstances of the violation. Such a procedure, would, in most instances, reduce the total litigation expenses to both the Government and private parties, relieve the overburdened Federal Courts, while at the same time retain the safeguards of justice through the reviewability of Commission decisions in United States Courts of Appeals.

H.R. 755 would bring the Commission's practices into line with those of other Federal agencies such as the Civil Aeronautics Board, United States Coast Guard, the Bureau of Customs, and the Immigration and Naturalization Service.

The Federal Maritime Commission was the only witness at the hearings on H.R. 755, and strongly supported the bill. Without exception, departmental reports interposed no objection to H.R. 755. The Committee on Maritime Legislation of the Maritime Law Association of

the United States filed a letter stating that while they had no strong consensus for a position, by simple majority of those reporting they were in opposition to H.R. 755. The position of this Committee would appear to be that the enforcement of the Shipping Act of 1916, involving concepts closely related to competition, often require a form of juridical determination better left to the courts.

During the hearings on H.R. 755, your Committee noted that the Shipping Act, 1916, did not provide a penalty for violations of the Commission's rules and regulations. Your Committee was informed that section 806(d) of the Merchant Marine Act, 1936, applies in the case of a violation of any order, rule or regulation issued by the Commission pursuant to the Shipping Act, 1916.

The Commission strongly supported your Committee's amendment to the bill that grants the Commission specific authority to impose a civil penalty of up to \$1,000 for a violation of its orders, rules, or regulations. This provision would supercede section 806(d) of the Merchant Marine Act, 1936, since that section has application only where no other authority is specifically provided for violation of a rule, regulation or order. This amendment proposed by your Committee would differ from section 806(d) of the Merchant Marine Act, 1936, in two major respects. It would be civil instead of criminal, and the amount of the penalty would be increased from \$500 to \$1,000.

The authority provided by this Committee amendment would be extremely useful to the Commission. It would remove the inconsistency which would exist without this provision. H.R. 755, as introduced, would make most statutory violations of the Shipping Act subject to a civil penalty, whereas the penalty for violation of the Commission's own orders, rules and regulations, which in most instances would be less serious infractions than statutory violations, would remain subject to a criminal penalty. Having the authority to actually impose a civil penalty would permit the Commission to more effectively administer its regulatory functions.

Your Committee notes that this amendment would bring the authority of the Commission in line with that of the Civil Aeronautical Board which has authority pursuant to section 901 of the Federal Aviation Act, to impose civil penalties of not to exceed \$1,000 for violation of any rule, regulation or order issued by the Board pursuant to Title IV covering economic regulation of Air Carriers (49 U.S.C. 1471).

Subsequent to the hearings on H.R. 755, your Committee received a letter from the law firm of Graham & James, San Francisco, California, objecting to the provision in the bill that would permit the Commission to assess a civil penalty in lieu of referring the case to the Justice Department to establish a *de novo* case of the offense in the United States District Courts. The position of Graham & James is that such a procedure would undermine the very concept of due process under law, to which their steamship clients are entitled, as the very nature of the administrative agency process necessarily makes the agency peculiarly illsuited for the imposition of punitive sanctions. At the invitation of your Committee, the Commission submitted a letter in rebuttal. The Commission quite correctly pointed out that (a) the authority conferred by H.R. 755 is not unique, (b) the ad-

ministrative imposition of penalties is commonplace, and (c) there are numerous agencies and departments, including the Federal Maritime Commission, that now have similar authority to impose civil sanctions. On balance, your Committee concludes that the contentions made by Graham & James are not convincing and are adequately met in the letter of August 5, 1971, from the Federal Maritime Commission. As hereinbefore mentioned, any such determination by the Commission would be subject to judicial review in a United States Court of Appeals under the Administrative Orders Review Act (28 U.S.C. 2341 *et seq.*).

CONCLUSION

The new shipping concepts, including containerization, LASH ships, barges and intermodal shipments offer carriers and shippers alike more opportunity to follow the practices which are prohibited by the sections of the Acts which the bill would amend. Your Committee concludes that H.R. 755, as reported, is necessary if the Federal Maritime Commission is to effectively carry out its regulatory responsibilities.

The bill was ordered reported, unanimously, with amendments, after full and careful consideration of the record. Your Committee strongly supports the bill.

COST OF LEGISLATION

Enactment of the bill will not result in any additional cost to the Government.

DEPARTMENTAL REPORTS

There follows the text of departmental reports received on the legislation.

FEDERAL MARITIME COMMISSION,
Washington, D.C., May 26, 1971.

HON. CARL ALBERT,
Speaker of the House of Representatives,
Washington, D.C.

DEAR MR. SPEAKER: There are submitted herewith four copies of a proposed bill, together with a statement of purpose and need for the draft bill, to amend the Shipping Act, 1916, and the Intercoastal Shipping Act, 1933, to convert criminal penalties to civil penalties in certain instances.

The need for and purpose of the proposed bill are set forth in the accompanying statement.

The Federal Maritime Commission urges enactment of the bill at the first session of the 92nd Congress for the reasons set forth in the accompanying statement.

The Office of Management and Budget has advised that, from the standpoint of the Administration's program, there is no objection to the submission of this proposed legislation to the Congress.

Sincerely,

HELEN DELICH BENTLEY,
Chairman.

A BILL To amend the Shipping Act, 1916, and the Intercoastal Shipping Act, 1933, to convert criminal penalties to civil penalties in certain instances and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Shipping Act, 1916 (46 U.S.C. 801 et seq.), is amended as follows:

(a) By deleting that part of the first sentence in the last paragraph of Sec. 15, immediately preceding the proviso, and substituting the following:

"Whoever violates any provision of this section or of section 14b shall be subject to a civil penalty of not more than \$1,000 for each day such violation continues."

(b) By deleting the last paragraph of Sec. 16 and substituting the following:

"Whoever violates any provision of this section other than paragraphs First and Third hereof shall be subject to a civil penalty of not more than \$5,000 for each such violation.

"Whoever violates paragraphs First and Third hereof shall be guilty of a misdemeanor punishable by a fine of not more than \$5,000 for each offense."

(c) By deleting Sec. 18(b) (6) and substituting the following:

"(6) Whoever violates any provision of this section shall be subject to a civil penalty of not more than \$1,000 for each day such violation continues."

(d) By deleting Sec. 32 and substituting therefor the following:

"SEC. 32. (a) That whoever violates any provision of sections 14 through 21 and section 44 of this Act, except where a different penalty is provided, shall be subject to a civil penalty not to exceed \$5,000 for each such violation.

(b) Whoever violates any provision of any other section of this Act, except where a different penalty is provided, shall be guilty of a misdemeanor, punishable by fine not to exceed \$5,000."

(e) By adding the following as a new Sec. 45:

"SEC. 45. Civil penalties provided for violations of sections 14 through 21, and 44 of this Act may be assessed by the Federal Maritime Commission.

(f) By renumbering present Sec. 45 to Sec. 46.

SEC. 2. The last sentence of Sec. 2 of the Intercoastal Shipping Act, 1933 (46 U.S.C. 844), is amended to read as follows:

"Whoever violates any provision of this section shall be subject to a civil penalty to be assessed by the Federal Maritime Commission of not more than \$1,000 for each day such violation continues.

STATEMENT OF PURPOSES AND NEED FOR THE BILL TO AMEND THE SHIPPING ACT, 1916, AND THE INTERCOASTAL SHIPPING ACT, 1933

The bill would change the penalties of section 16 (except for paragraphs First and Third) of the Act from criminal penalties to civil penalties, with the money amounts of the penalties to remain un-

changed. It also changes the general penalty provision of section 32 of the Act by making all violations of sections under the jurisdiction of the Federal Maritime Commission, for which no penalty is specifically provided, civil instead of criminal. Authority would be vested in the Commission to fix the amount of civil penalties for violations of sections subject to its jurisdiction. Penalties assessed by the Commission would be remitted or mitigated by it under appropriate circumstances pursuant to the Federal Claims Collection Act of 1966, 31 U.S.C. 951-953, and regulations promulgated thereunder. Since the bill would authorize the Commission to assess civil penalties, sections 15 and 18(b) (6) would be amended to eliminate the words "to be recovered by the United States in a civil action."

As the Act now stands, civil penalties are imposed for violations of section 15, which requires the filing for approval of agreements restricting competition, and of section 18(b), which requires the filing of tariffs. However, the penalties of section 14, which prohibits deferred rebates and other unfair practices, and section 16, which prohibits false billing and undue preferences, are criminal.

The Commission believes that better administration of the Act will be derived from making certain of the penalties under section 16 and penalties under section 32 civil and empowering the Commission to determine and adjudge such penalties. The Commission determinations under these sections are subject to judicial review in a United States Court of Appeals under the Review Act of 1950 (28 U.S.C. 2341 *et seq.*). This would eliminate the necessity of a *de novo* district court penalty suit as is presently required and would enable the Commission to relate the amount of the penalty directly to the nature and circumstances of the violation. Such a procedure should, in many instances, reduce the total litigation expenses to both the government and private parties while at the same time retaining the safeguards of justice through the reviewability of Commission decisions in U.S. Courts of Appeals.

Section 2 of the bill would give the Commission authority to assess the civil penalties presently provided for violations of the Intercoastal Shipping Act, 1933.

FEDERAL MARITIME COMMISSION,
Washington, D.C., May 26, 1971.

HON. EDWARD A. GARMATZ,
Chairman, Committee on Merchant Marine and Fisheries, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to your request for the views of the Federal Maritime Commission with respect to H.R. 755, a bill to amend the Shipping Act, 1916, and the Intercoastal Shipping Act, 1933, to convert criminal penalties to civil penalties in certain instances, and for other purposes.

The bill would change the penalties of section 16 of the Shipping Act, 1916 (except for sections First and Third) from criminal penalties to civil penalties, with the money amounts of the penalties to remain unchanged. It also changes the general penalty provision of section 32 of the Act by making all violations of sections under the jurisdiction of the Federal Maritime Commission, for which no penalty is

specifically provided, civil instead of criminal. Authority would be vested in the Commission to fix the amount of civil penalties for violations of sections subject to its jurisdiction. Penalties assessed by the Commission would be remitted or mitigated by it under appropriate circumstances pursuant to the Federal Claims Collection Act of 1966, 31 U.S.C. 951-953, and regulations promulgated thereunder. Since the bill would authorize the Commission to assess civil penalties, sections 15 and 18(b) (6) would be amended to eliminate the words "to be recovered by the United States in a civil action."

As the Act now stands, civil penalties are imposed for violations of section 15, which requires the filing for approval of agreements restricting competition, and of section 18(b), which requires the filing of tariffs. However, the penalties of section 14, which prohibits deferred rebates and other unfair practices, and section 16, which prohibits false billing and undue preferences, are criminal.

The Commission believes that better administration of the Act will be derived from making certain of the penalties under section 16 and penalties under section 32 civil, and empowering the Commission to determine and adjudge such penalties. The Commission determinations under these sections are subject to judicial review in a United States Court of Appeals under the Review Act of 1950 (28 U.S.C. 2341 *et seq.*). This would eliminate the necessity of a *de novo* district court penalty suit as is presently required and would enable the Commission to relate the amount of the penalty directly to the nature and circumstances of the violation. Such a procedure should, in many instances, reduce the total litigation expenses to both the Government and private parties while at the same time retaining the safeguards of justice through the reviewability of Commission decisions in U.S. Courts of Appeals.

Section 2 of the bill would give the Commission authority to assess the civil penalties presently provided for violations of the Intercoastal Shipping Act, 1933. In order to conform the language of this proposed amendment to the language in the proposed revision of Sec. 45 of the Shipping Act, 1916, it is suggested that the word "assessed" be substituted for the word "imposed" in line 12, page 3, of the bill.

The Commission recommends that the Congress act favorably on H.R. 755, as amended.

The Office of Management and Budget has advised that there would be no objection to the submission of this letter from the standpoint of the Administration's program.

Sincerely,

HELEN DELICH BENTLY,
Chairman.

CIVIL AERONAUTICS BOARD,
Washington, D.C., June 16, 1971.

HON. EDWARD A. GARMATZ,
Chairman, Committee on Merchant Marine and Fisheries, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to your request for the Board's views on H.R. 755, a bill "To amend the Shipping Act, 1916, and the Intercoastal Shipping Act, 1933, to convert criminal penalties to civil

penalties in certain instances, and for other purposes." The Board assumes that your Committee is primarily interested in the consistency of the proposed procedures with those of the Board and its experience thereunder.

Under H.R. 755, which is a Federal Maritime Commission proposal, civil penalties would be substituted for criminal penalties for violations of those provisions of section 16 of the Shipping Act of 1916 prohibiting the obtaining of lower rates by means of false billing, false classification, or other unfair means. Such penalties also would be substituted for criminal penalties in specified instances of other violations where different penalties were not otherwise provided. The Commission would be empowered to assess civil penalties under both the 1916 and 1933 Acts.

The provisions of the bill are comparable to the civil penalty provisions of the Federal Aviation Act of 1958, which were made applicable to economic violations by a 1962 amendment to section 901(a) of the Act (49 U.S.C. 1471). However, economic violations, if knowing and willful, are also subject to criminal sanctions under section 902(a) (49 U.S.C. 1472).

As we noted in a 1970 report to your Committee with respect to a bill (H.R. 15548) containing provisions identical to those of the current bill, the Board has found that the availability of civil penalties for economic violations has resulted in a more flexible administration of the Act. However, the Board defers (as it did in the case of H.R. 15548) to the views of the Federal Maritime Commission as to the desirability or need for H.R. 755.

The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

WHITNEY GILLILLAND,
Acting Chairman.

OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, D.C., June 29, 1971.

HON. EDWARD A. GARMATZ,
Chairman, Committee on Merchant Marine and Fisheries, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice on H.R. 755, a bill "To amend the Shipping Act, 1916, and the Intercoastal Shipping Act, 1933, to convert criminal penalties to civil penalties in certain instances, and for other purposes."

The bill would change certain (but not all) of the criminal provisions of the Shipping Act of 1916 so that certain violations now punishable by criminal fines would be made punishable instead by civil penalties in the same maximum amounts, and would also authorize the Federal Maritime Commission to assess the penalties. The bill would also give the Commission power to assess the civil penalties presently provided for violations of the Intercoastal Shipping Act, 1933.

H.R. 755 is identical to H.R. 15548, 91st Congress, on which this Department reported to you on June 1, 1970. The Department has no objection to enactment of this legislation.

The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's Program.

Sincerely,

RICHARD G. KLEINDIENST,
Deputy Attorney General.

DEPARTMENT OF COMMERCE,
Washington, D.C., July 22, 1971.

HON. EDWARD A. GARMATZ,
Chairman, Committee on Merchant Marine and Fisheries, House of Representatives, Washington, D. C.

DEAR MR. CHAIRMAN: This is in further reply to your request for the views of this Department with respect to H.R. 755, a bill to amend the Shipping Act, 1916, and the Intercoastal Shipping Act, 1933, to convert criminal penalties to civil penalties in certain instances, and for other purposes.

The Federal Maritime Commission has the responsibility to administer certain provisions of the Shipping Act, 1916, as amended (46 U.S.C. 801-842), and the Intercoastal Shipping Act, 1933, as amended (46 U.S.C. 843-848). The Intercoastal Shipping Act, 1933, as amended, contains a civil penalty provision, and the Shipping Act, 1916, as amended, contains both civil and criminal penalty provisions. Violations of these penalty provisions are referred by the Federal Maritime Commission to the Department of Justice, and enforced by means of proceedings brought in a United States district court.

Presently, criminal penalties are provided for violations of sections 16 and 32 of the Shipping Act, 1916 as amended. Section 16 prohibits false billing, undue preference and other unfair practices. Section 32 is the general penalty provision that applies to violations for which a specific penalty is not provided by the Act. H.R. 755 would amend section 16, except for paragraphs First and Third, to change the penalty from criminal to civil. The amount of the penalty would remain the same. The bill would also amend section 32 to change from criminal to civil the penalty for violations of sections 14 through 21 and section 44. Again, the amount of the penalty would remain the same.

H.R. 755 would add a new section 45 to the Shipping Act, 1916, as amended, vesting authority in the Federal Maritime Commission to assess the amount of civil penalties for violations of sections 14 through 21, and section 44. Existing section 45 would become section 46. Finally, as the Federal Maritime Commission would be authorized to assess civil penalties, the bill would amend sections 15 and 18(b) (6) to eliminate the words "to be recovered by the United States in a civil action".

H.R. 755 would amend section 2 of the Intercoastal Shipping Act, 1933, as amended, concerning rate schedules to provide a civil penalty of \$1,000, and to authorize the Federal Maritime Commission to assess this penalty.

We understand the Federal Maritime Commission believes that it could better administer its responsibilities under the Shipping Act, 1916, as amended, and the Intercoastal Shipping Act, 1933, as amended, with the amendments made by the bill. The Federal Maritime Commission could relate the amount of the civil penalty directly to the nature and circumstances of the violation. Additionally, total litigation expenses should be reduced as the need for a *de novo* district court civil penalty suit would be eliminated. Determinations by the Federal Maritime Commission under these Acts would continue to be subject to judicial review in a United States court of appeals.

As H.R. 755 would appear to assist the Federal Maritime Commission in the enforcement of the statutes it administers, this Department has no objection to the bill.

We have been advised by the Office of Management and Budget that there would be no objection to the submission of this report from the standpoint of the administration's program.

Sincerely,

WILLIAM N. LETSON,
General Counsel.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, existing law in which no change is proposed is shown in roman) :

SHIPPING ACT, 1916

(46 U.S.C. 801 et seq.)

* * * * *

SEC. 15. That every common carrier by water, or other person subject to this Act, shall file immediately with the Commission a true copy, or, if oral, a true and complete memorandum, of every agreement with another such carrier or other person subject to this Act, or modification or cancellation thereof, to which it may be a party or conform in whole or in part, fixing or regulating transportation rates or fares; giving or receiving special rates, accommodations, or other special privileges or advantages; controlling, regulating, preventing, or destroying competition; pooling or apportioning earnings, losses, or traffic; allotting ports or restricting or otherwise regulating the number and character of sailings between ports; limiting or regulating in any way the volume or character of freight or passenger traffic to be carried; or in any manner providing for an exclusive, preferential, or cooperative working arrangement. The term "agreement" in this section includes understandings, conferences, and other arrangements.

The Commission shall by order, after notice and hearing, disapprove, cancel or modify any agreement, or any modification or cancellation thereof, whether or not previously approved by it, that it finds to be unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United

States and their foreign competitors, or to operate to the detriment of the commerce of the United States, or to be contrary to the public interest, or to be in violation of this Act, and shall approve all other agreements, modifications, or cancellations. No such agreement shall be approved, nor shall continued approval be permitted for any agreement (1) between carriers not members of the same conference or conferences of carriers serving different trades that would otherwise be naturally competitive, unless in the case of agreements between carriers, each carrier, or in the case of agreements between conferences, each conference, retains the right of independent action, or (2) in respect to any conference agreement, which fails to provide reasonable and equal terms and conditions for admission and readmission to conference membership of other qualified carriers in the trade, or fails to provide that any member may withdraw from membership upon reasonable notice without penalty for such withdrawal.

The Commission shall disapprove any such agreement, after notice and hearing, on a finding of inadequate policing of the obligations under it, or of failure or refusal to adopt and maintain reasonable procedures for promptly and fairly hearing and considering shippers' requests and complaints.

Any agreement and any modification or cancellation of any agreement not approved, or disapproved, by the Commission shall be unlawful, and agreements, modifications, and cancellations shall be lawful only when and as long as approved by the Commission; before approval or after disapproval it shall be unlawful to carry out in whole or in part, directly or indirectly, any such agreement, modification, or cancellation; except that tariff rates, fares, and charges, and classifications, rules, and regulations explanatory thereof (including changes in special rates and charges covered by section 14b of this Act which do not involve a change in the spread between such rates and charges and the rates and charges applicable to noncontract shippers) agreed upon by approved conferences, and changes and amendments thereto, if otherwise in accordance with law, shall be permitted to take effect without prior approval upon compliance with the publication and filing requirements of section 18(b) hereof and with the provisions of any regulations the Commission may adopt.

Every agreement, modification, or cancellation lawful under this section, or permitted under section 14b, shall be excepted from the provisions of the Act approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," and amendments and Acts supplementary thereto, and the provisions of sections 73 to 77, both inclusive, of the Act approved August 27, 1894, entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes," and amendments and Acts supplementary thereto.

[Whoever violates any provision of this section or of section 14b shall be liable to a penalty of not more than \$1,000 for each day such violation continues, to be recovered by the United States in a civil action:] *Whoever violates any provision of this section or of section 14b shall be subject to a civil penalty of not more than \$1,000 for each day such violation continues: Provided, however, That the penalty provisions of this section shall not apply to leases, licenses, assignments, or other agreements of similar character for the use of terminal*

property or facilities which were entered into before the date of enactment of this Act, and, if continued in effect beyond said date, submitted to the Federal Maritime Commission for approval prior to or within ninety days after the enactment of this Act, unless such leases, licenses, assignments, or other agreements for the use of terminal facilities are disapproved, modified, or canceled by the Commission and are continued in operation without regard to the Commission's action thereon. The Commission shall promptly approve, disapprove, cancel, or modify each such agreement in accordance with the provisions of this section.

SEC. 16. That it shall be unlawful for any shipper, consignor, consignee, forwarder, broker, or other person, or any officer, agent, or employee thereof, knowingly and wilfully, directly or indirectly, by means of false billing, false classification, false weighing, false report of weight, or by any other unjust or unfair device or means to obtain or attempt to obtain transportation by water for property at less than the rates or charges which would otherwise be applicable.

That it shall be unlawful for any common carrier by water, or other person subject to this Act, either alone or in conjunction with any other person, directly or indirectly:

First. To make or give any undue or unreasonable preference or advantage to any particular person, locality, or description or traffic in any respect whatsoever, or to subject any particular person, locality, or description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever: *Provided*, That within thirty days after enactment of this Act, or within thirty days after the effective date or the filing with the Commission, whichever is later, of any conference freight rate, rule, or regulation in the foreign commerce of the United States, the Governor of any State, Commonwealth, or possession of the United States may file a protest with the Commission upon the ground that the rate, rule, or regulation unjustly discriminates against that State, Commonwealth, or possession of the United States, in which case the Commission shall issue an order to the conference to show cause why the rate, rule, or regulation should not be set aside. Within one hundred and eighty days from the date of the issuance of such order, the Commission shall determine whether or not such rate, rule, or regulation is unjustly discriminatory and issue a final order either dismissing the protest, or setting aside the rate, rule, or regulation.

Second. To allow any person to obtain transportation for property at less than the regular rates or charges then established and enforced on the line of such carrier by means of false billings, false classification, false weighing, false report of weight, or by any other unjust or unfair device or means.

Third. To induce, persuade, or otherwise influence any marine insurance company or underwriter, or agent thereof, not to give a competing carrier by water as favorable a rate of insurance on vessel or cargo, having due regard to the class of vessel or cargo, as is granted to such carrier or other person subject to this Act.

[Whoever violates any provision of this section shall be guilty of a misdemeanor punishable by a fine of not more than \$5,000 for each offense.] *Whoever violates any provision of this section other than*

paragraphs First and Third hereof shall be subject to a civil penalty of not more than \$5,000 for each such violation.

Whoever violates paragraphs First and Third hereof shall be guilty of a misdemeanor punishable by a fine of not more than \$5,000 for each offense.

* * * * *

SEC. 18(a) That every common carrier by water in interstate commerce shall establish, observe, and enforce just and reasonable rates, fares, charges, classifications, and tariffs, and just and reasonable regulations and practices relating thereto and to the issuance, form, and substance of tickets, receipts, and bills of lading, the manner and method of presenting, marketing, packing, and delivering property for transportation, the carrying of personal, sample, and excess baggage, the facilities for transportation, and all other matters relating to or connected with the receiving, handling, transporting, storing, or delivering of property.

Every such carrier shall file with the board and keep open to public inspection, in the form and manner and within the time prescribed by the board, the maximum rates, fares, and charges for or in connection with transportation between points on its own route; and if a through route has been established, the maximum rates, fares, and charges for or in connection with transportation between points on its own route and points on the route of any other carrier by water.

No such carrier shall demand, charge, or collect a greater compensation for such transportation than the rates, fares, and charges filed in compliance with this section, except with the approval of the board and after ten days' public notice in the form and manner prescribed by the board, stating the increase proposed to be made; but the board for good cause shown may waive such notice.

Whenever the board finds that any rate, fare, charge, classification, tariff, regulation, or practice, demanded, charged, collected, or observed by such carrier is unjust or unreasonable, it may determine, prescribe, and order enforced a just and reasonable maximum rate, fare, or charge, or a just and reasonable classification, tariff, regulation, or practice.

(b) (1) From and after ninety days following enactment hereof every common carrier by water in foreign commerce and every conference of such carriers shall file with the Commission and keep open to public inspection tariffs showing all the rates and charges of such carrier or conference of carriers for transportation to and from United States ports and foreign ports between all points on its own route and on any through route which has been established. Such tariffs shall plainly show the places between which freight will be carried, and shall contain the classification of freight in force, and shall also state separately such terminal or other charge, privilege, or facility under the control of the carrier or conference of carriers which is granted or allowed, and any rules or regulations which in anywise change, affect, or determine any part or the aggregate of such aforesaid rates, or charges, and shall include specimens of any bill of lading, contract of affreightment, or other document evidencing the transportation agree-

ment. Copies of such tariffs shall be made available to any person and a reasonable charge may be made therefor. The requirements of this section shall not be applicable to cargo loaded and carried in bulk without mark or count, or to cargo which is softwood lumber. As used in this paragraph, the term "softwood lumber" means softwood lumber not further manufactured than passing lengthwise through a standard planing machine and crosscut to length, logs, poles, piling, and ties, including such articles preservatively treated, or bored, or framed, but not including plywood or finished articles knocked down or set up.

(2) No change shall be made in rates, charges, classifications, rules or regulations, which results in an increase in cost to the shipper, nor shall any new or initial rate of any common carrier by water in foreign commerce or conference of such carriers be instituted, except by the publication, and filing, as aforesaid, of a new tariff or tariffs which shall become effective not earlier than thirty days after the date of publication and filing thereof with the Commission, and each such tariff or tariffs shall plainly show the changes proposed to be made in the tariff or tariffs then in force and the time when the rates, charges, classifications, rules or regulations as changed are to become effective: *Provided, however,* That the Commission may, in its discretion and for good cause, allow such changes and such new or initial rates to become effective upon less than the period of thirty days herein specified. Any changes in the rates, charges, or classifications, rules or regulations which results in a decreased cost to the shipper may become effective upon the publication and filing with the Commission. The term "tariff" as used in this paragraph shall include any amendment, supplement or reissue.

(3) No common carrier by water in foreign commerce or conference of such carriers shall charge or demand or collect or receive a greater or less or different compensation for the transportation of property or for any service in connection therewith than the rates and charges which are specified in its tariffs on file with the Commission and duly published and in effect at the time; nor shall any such carrier rebate, refund, or remit in any manner or by any device any portion of the rates or charges so specified, nor extend or deny to any person any privilege or facility, except in accordance with such tariffs: *Provided, however,* That the Federal Maritime Commission may in its discretion and for good cause shown permit a common carrier by water in foreign commerce or conference of such carriers to refund a portion of freight charges collected from a shipper or waive the collection of a portion of the charges from a shipper where it appears that there is an error in a tariff of a clerical or administrative nature or an error due to inadvertence in failing to file a new tariff and that such refund or waiver will not result in discrimination among shippers: *Provided further,* That the common carrier by water in foreign commerce or conference of such carriers has, prior to applying for authority to make refund, filed a new tariff with the Federal Maritime Commission which sets forth the rate on which such refund or waiver would be based: *Provided further,* That the carrier or conference agrees that if permission is granted by the Federal Maritime Commission, an appropriate notice will be pub-

lished in the tariff, or such other steps taken as the Federal Maritime Commission may require, which give notice of the rate on which such refund or waiver would be based, and additional refunds or waivers as appropriate shall be made with respect to other shipments in the manner prescribed by the Commission in its order approving the application: *And provided further*, That application for refund or waiver must be filed with the Commission within one hundred and eighty days from the date of shipment.

(4) The Commission shall by regulations prescribe the form and manner in which the tariffs required by this section shall be published and filed; and the Commission is authorized to reject any tariff filed with it which is not in conformity with this section and with such regulations. Upon rejection by the Commission, a tariff shall be void and its use unlawful.

(5) The Commission shall disapprove any rate or charge filed by a common carrier by water in the foreign commerce of the United States or conference of carriers which, after hearing, it finds to be so unreasonably high or low as to be detrimental to the commerce of the United States.

[(6) Whoever violates any provision of this section shall be liable to a penalty of not more than \$1,000 for each day such violation continues, to be recovered by the United States in a civil action.]

(6) *Whoever violates any provision of this section shall be subject to a civil penalty of not more than \$1,000 for each day such violation continues.*

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[SEC. 32. That whoever violates any provisions of this Act, except where a different penalty is provided, shall be guilty of a misdemeanor, punishable by fine not to exceed \$5,000.]

SEC. 32 (a) That whoever violates any provision of section 14 through 21 and section 44 of this Act, except where a different penalty is provided, shall be subject to a civil penalty not to exceed \$5,000 for each such violation.

(b) Whoever violates any provision of any other section of this Act, except where a different penalty is provided, shall be guilty of a misdemeanor, punishable by a fine not to exceed \$5,000.

(c) Whoever violates any order, rule or regulation of the Federal Maritime Commission made or issued in the exercise of its powers, duties, or functions, shall be subject to a civil penalty to be assessed by the Federal Maritime Commission of not more than \$1,000 for each day such violation continues.

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SEC. 45. Civil penalties provided for violations of sections 14 through 21 and 44 of this Act may be assessed by the Federal Maritime Commission.

SEC. [45.] 46. That this Act may be cited as "Shipping Act, 1916."

INTERCOASTAL SHIPPING ACT, 1933 (46 U.S.C. 844)

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SEC. 2. That every common carrier by water in intercoastal commerce shall file with the Federal Maritime Board and keep open to public inspection schedules showing all the rates, fares, and charges for or in connection with transportation between intercoastal points on its own route; and, if a through route has been established, all the rates, fares, and charges for or in connection with transportation between intercoastal points on its own route and points on the route of any other carrier by water. The schedules filed, and kept open to public inspection as aforesaid by any such carrier shall plainly show the places between which passengers and/or freight will be carried, and shall contain the classification of freight and of passenger accommodations in force, and shall also state separately each terminal or other charge, privilege, or facility, granted or allowed, and any rules or regulations which in anywise change, affect, or determine any part of the aggregate of such aforesaid rates, fares, or charges, or the value of the service rendered to the passenger consignor, or consignee, and shall include the terms and conditions of any passenger ticket, bill of lading, contract of affreightment, or other document evidencing the transportation agreement. The terms and conditions as filed with the Federal Maritime Board shall be framed under glass and posted in a conspicuous place on board each vessel where they may be seen by passengers and others at all times. Such carriers in establishing and fixing rates, fares, or charges may make equal rates, fares, or charges for similar service between all ports of origin and all ports of destination, and it shall be unlawful for any such carrier, either directly or indirectly, through the medium of any agreement, conference, association, understanding, or otherwise, to prevent or attempt to prevent any such carrier from extending service to any publicly owned terminal located on any improvement project authorized by the Congress at the same rates which it charges at its nearest regular port of call. Such schedules shall be plainly printed, and copies shall be kept posted in a public and conspicuous place at every wharf, dock, and office of such carrier where passengers or freight are received for transportation, in such manner that they shall be readily accessible to the public and can be conveniently inspected. In the event that any such schedule includes the terms and conditions of any passenger ticket, bill of lading, contract of affreightment or other document evidencing the transportation agreement, as herein provided, copies of such terms and conditions shall be made available to any shipper, consignee, or passenger upon request. Such terms and conditions, if filed as permitted by this section and framed under glass and posted in a conspicuous place on board each vessel where they may be seen by passengers and others at all times, may be incorporated by reference in a short form of same actually issued for the transportation, or in a dock receipt or other document issued in connection therewith, by notice printed on the back of each document that all parties to the contract are bound by the terms and conditions as filed with the Federal Maritime Board and posted on board each vessel, and when so incorporated by reference every carrier and any other person having any interest or duty in respect of such transportation shall be deemed to have such notice thereof as if all such terms and conditions had been set forth in the short form document.

No change shall be made in the rates, fares, or charges, or classifications, rules, or regulations, which have been filed and posted as required by this section, except by the publication, filing, and posting as aforesaid of a new schedule or schedules which shall become effective not earlier than thirty days after date of posting and filing thereof with the board and such schedule or schedules shall plainly show the changes proposed to be made in the schedule or schedules then in force and the time when the rates, fares, charges, classifications, rules, or regulations as changed are to become effective: *Provided*, That the board may, in its discretion and for good cause, allow changes upon less than the period of thirty days herein specified: *And provided, further*, That schedules or changes which provide for extension of actual service to additional ports at rates of said carrier already in effect for similar service at the nearest port of call to said additional ports shall become effective immediately upon notice to the board.

From and after ninety days following enactment hereof no person shall engage in transportation as a common carrier by water in intercoastal commerce unless and until its schedules as provided by this section have been duly and properly filed and posted; nor shall any common carrier by water in intercoastal commerce charge or demand or collect or receive a greater or less or different compensation for the transportation of passengers or property or for any service in connection therewith than the rates, fares, and or/charges which are specified in its schedules filed with the board and duly posted and in effect at the time; nor shall any such carrier refund or remit in any manner or by any device any portion of the rates, fares, or charges so specified, nor extend or deny to any person any privilege or facility, except in accordance with such schedules.

The board shall by regulations prescribe the form and manner in which the schedules required by this section shall be published, filed, and posted; and the board is authorized to reject any schedule filed with it which is not in consonance with this section and with such regulations. Any schedule so rejected by the board shall be void and its use shall be unlawful.

[Whoever violates any provision of this section shall be liable to a penalty of not more than \$1,000 for each day such violation continues, to be recovered by the United States in a civil action.]

Whoever violates any provision of this section shall be subject to a civil penalty to be assessed by the Federal Maritime Commission of not more than \$1,000 for each day such violation continues.

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